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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SIEGFRIED MUELLER,)	
)	
Petitioner,)	
)	3:18-cv-00312-HDM-VPC
v.)	
)	
ISIDRO BACA, et al.)	ORDER
)	
Respondents.)	
)	
_____)	

This *pro se* habeas petition pursuant to 28 U.S.C. § 2241 comes before the court on petitioner's application for leave to proceed *in forma pauperis* (ECF No. 1) and for initial review pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

Following review of the petitioner's pauper application, the court finds that petitioner cannot pay the filing fee. Petitioner will therefore be granted leave to proceed *in forma pauperis* and will not have to pay the filing fee.

1 Upon review of the petition, which the court construes as
2 encompassing both petitions submitted by petitioner (ECF Nos. 1-1 &
3 1-2), it is clear that the petition must be dismissed for want of
4 jurisdiction.

5 Petitioner is a state prisoner currently serving a sentence of
6 72 to 180 months for burglary with possession of a deadly weapon. See
7 <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=43265> (last
8 accessed June 28, 2018). In his petition, petitioner asserts that he
9 is subject to a detainer issued by Immigration and Customs Enforcement
10 ("ICE"). He seeks an order from this court either compelling ICE to
11 conduct his deportation hearing immediately or dismissing the
12 detainer. The court lacks jurisdiction to do either.

13 First, federal habeas corpus jurisdiction is limited to petitions
14 from persons who are "in custody in violation of the Constitution and
15 laws of the United States." 28 U.S.C. § 2241(c)(3); *Maleng v. Cook*,
16 490 U.S. 488, 490 (1989). The "in custody" requirement is
17 jurisdictional. *Wilson v. Betteque*, 554 F.3d 816, 821 (9th Cir. 2009)
18 ("The text of the statute makes clear, and the Supreme Court has
19 confirmed, that 'custody' is a jurisdictional prerequisite to habeas
20 review under § 2241(c)(3).") (citing *Hensley v. Man. Court, San Jose*
21 *Milpita Judicial Dist.*, 411 U.S. 345, 351 (1973)). The Supreme Court
22 has interpreted the statutory language to mean "in custody" pursuant
23 to the conviction or sentence under attack. *Maleng*, 490 U.S. at
24 490-91.

25 Petitioner alleges that he has not received a deportation
26 hearing, which the court construes to mean that he is under no final
27 order of removal by ICE. A "bare detainer letter alone does not
28 sufficiently place an alien in INS custody to make habeas corpus

1 available." *Campos v. I.N.S.*, 62 F.3d 311, 314 (9th Cir. 1995); see
2 also *Bederian v. Apker*, 2017 WL 880416, at *1 (E.D. Cal. March 6,
3 2017); *Bone v. Holder*, 2015 WL 2345545, at *2 (E.D. Cal. May 14,
4 2015) (collecting cases); *Montalvo v. United States*, 2010 WL 1418193
5 (D. Nev. April 6, 2010) (denying a COA on the issue). Accordingly,
6 petitioner is not in ICE custody, and the court therefore lacks
7 jurisdiction pursuant to § 2241 to hear his claims.

8 Second, the court is similarly without jurisdiction to consider
9 petitioner's request that the court order ICE to conduct a deportation
10 hearing. *Campos*, 62 F.3d at 313-14.

11 In short, as petitioner is not in this case challenging the
12 judgment of conviction pursuant to which he is currently in custody,
13 the court lacks jurisdiction to consider his claims and the petition
14 must therefore be dismissed without prejudice.

15 In accordance with the foregoing, IT IS THEREFORE ORDERED that
16 petitioner's application for leave to proceed *in forma pauperis* (ECF
17 No. 1) is GRANTED. Petitioner shall not be required to pay the filing
18 fee.

19 IT IS FURTHER ORDERED that the clerk of court shall file the
20 petition (ECF Nos. 1-1 & 1-2).¹

21 IT IS FURTHER ORDERED that the petition is hereby DISMISSED
22 WITHOUT PREJUDICE.

23 IT IS FURTHER ORDERED that petitioner is denied a certificate of
24 appealability, as jurists of reason would not find the court's
25 dismissal of the petition for lack of subject matter jurisdiction to
26

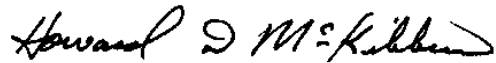
27 ¹ The Clerk is advised to file both "petitions" in the same
28 document as one petition.

1 be debatable or wrong.

2 IT IS FURTHER ORDERED that the Clerk of Court shall send
3 petitioner a copy of his papers in this action and shall enter final
4 judgment accordingly, dismissing this action without prejudice.

5 IT IS SO ORDERED.

6 DATED: This 29th day of June, 2018.
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10 HOWARD D. MCKIBBEN
11 UNITED STATES DISTRICT JUDGE
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